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IN THE

Supreme Court of the United States

October Term, 1959

No. 857

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, *Petitioners*

v.

JOHN A. PAVLOVSCAK, *Respondent*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITIONERS' REPLY BRIEF

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Respondent, in his Brief in Opposition to Petition for Certiorari, contends that this Court should deny the petition upon the ground that the petitioners failed to raise in the courts below the question presented here. Petitioners submit that respondent is in error.

The question presented to this Court by the petition is whether suits pertaining to the administration of an

employees' welfare trust fund created pursuant to Section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. 186(c)(5) must be brought in the federal court in the District of Columbia, the situs of the instant Fund.

From the inception of this suit, petitioners have urged that suits pertaining to the administration of this Fund must be brought in the federal court at its situs. Thus, petitioners appeared specially before the United States District Court for the Western District of Pennsylvania urging that venue and jurisdiction were improper in that court, and that the instant suit must be brought in the United States District Court for the District of Columbia. (See defendants' motion to dismiss, paragraphs 4 and 6, pp. 11a-12a of Joint Appendix).

The District Court, however, construed Section 302(c)(5) of the Labor Management Relations Act, 1947, 29 U.S.C. 186 (c)(5), and the national labor policy to permit that suits affecting the administration of an employee welfare trust fund created under Section 302(c)(5) be brought in the district in which the claimants reside, stating:

> "In addition to our thoughts that the defendants are not a trust in the normally accepted sense, we feel that they are a new creature created pursuant to the Labor-Management Relations Act of 1947, 29 U.S.C.A. § 141. They were created by federal law and should be amenable to federal law; there is no reason to resort to the old and ancient theories of trust law. The Fund is a creature of new federal legislation and we must not stifle it. The beneficiaries, the thousands of hard working miners, who have labored years under the ground in creating this Fund, must not be forced to go to Washington, D.C., but should and must be able to

go to the federal court in their district in order to have their rights and claims adjudicated in a tribunal convenient to them and certainly not inconvenient to the Fund.

"We repeat that this is a new type of relationship that only lately has been developed as a concept of employer-employee relationship." (Appendix, Pet. for Cert. pp. 7a-8a)

Petitioners renewed their contention before the United States Court of Appeals for the Third Circuit,[1] stating at pages 19 and 20 of their brief:

"We have seen that Congress intended to authorize the creation of welfare and retirement trusts subject to judicial supervision similar to that exercised over other inter vivos trusts of movables, and that the law regarding inter vivos trusts of movables requires that they shall be administered only by the court at the situs of the trust. It, therefore, follows that Congress intended a trust created pursuant to the authority of the Act to be responsible in matters of administration only to the court at the trust's situs.

"This interpretation is fortified by the express language of Section 302(c)(5) of the Act. (29

[1] See also petitioners' Application for Permission to Appeal from Order Denying Motion to Dismiss Complaint, wherein at page 8 thereof, petitioners stated:

"If disgruntled applicants for pensions, after failure to qualify under the regulations, are able to bring suit in each of 26 states, the tremendous burden of litigation which will be imposed upon the Fund will inevitably result in the erosion of the trust and will frustrate not only the uniform administration of the Fund but also the Congressional intent clearly expressed in the Labor Management Relations Act, 1947, and the Legislative history of the Act, which was reviewed by this Court in the Essex case."

> U.S.C.A. 186(c)(5)). Congress anticipated possible 'deadlock on the administration of such fund(s)' among the trustees and provided for the appointment of a neutral to break such deadlocks 'by the district court of the United States for the district *where the trust fund has its principal office*'. (Emphasis supplied). It may be concluded therefrom that Congress evinced a legislative intent that a trust permitted under this statute should be dealt with as any other trust of movables in that the court at its situs should be solely responsible for the judicial regulation of its administration."

Respondent clearly rgecognized petitioners' position, and on page 14 of his brief to the United States Court of Appeals for the Third Circuit admitted:[2]

> "Defendants, in their brief, refer to Section 302 of the Taft-Hartley Act, as giving them some supposed right to have actions against the Fund litigated only in Washington, D.C."

The Third Circuit, however, ignored this entire line of argument, affirming the District Court solely upon the basis of the construction of Pennsylvania law by Pennsylvania courts. (Appendix, Pet. for Cert. p. 12a) Petitioners then moved for a rehearing, again urging that the instant Fund and suits relating to its administration must be decided upon the basis of federal law, not state law. (See point 3 of petitioners' petition for rehearing, pp. 5-6.) Petitioners' petition for rehearing was denied upon the basis of Pennsylvania law. (Appendix, Pet. for Cert. pp. 15a-

[2] Indeed, respondent in his brief to the Third Circuit argued the contrary construction of Section 302(c)(5) at great length (See respondent's brief, pp. 14-18).

16a) This Court has uniformly held that a decision purportedly based upon state law but which in effect construes federal law, does not relieve this Court of its duty to pass upon the federal questions involved. *Grand River Dam Authority* v. *Grand Hydro* (1948) 335 U.S. 359, 369-70, 93 L. Ed. 64, 72, and cases cited therein.

Accordingly, petitioners in the instant petition for certiorari again raised the important federal question presented by this suit.

Finally, respondent claims that Section 302(c)(5) is essentially a criminal statute and cites *Weir* v. *Chicago Plastering Institute, Inc.* (D.C. Ill. 1959) 177 F. Supp. 688 (Respondent's Brief in Opposition, p. 4). This position cannot be reconciled with this Court's opinion in *Arroyo* v. *United States* (1959) 359 U.S. 419, from which we quoted at page 7 in the Petition for Certiorari.

Indeed, respondent's Brief in Opposition clearly reveals the confusion in the various courts as to the proper interpretation of an employees' welfare trust fund created pursuant to Section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. 186(c)(5), and as to the jurisdiction where suits affecting their administration must be brought. (Compare respondent's Brief, pp. 4-6, with Petition, p. 9)

Lewis v. *Stampalis* (No. 594, October Term, 1958), in which this Court denied certiorari on February 24, 1959 (see 359 U.S. 907), did not present the question in the posture in which it is presented in the instant petition and in the companion petition in *Lewis* v. *Mylotylk*, No. 856, October Term 1959. Important

pronouncements of this Court intervened in the meantime. See, e.g., *Arroyo* v. *United States*, decided May 4, 1959, 359 U.S. 419; and *Lewis* v. *Benedict Coal Corp.* (No. 18, October Term 1959), decided February 23, 1960, ... U.S. .... 4 L. Ed. 2d. 442.

The petition for certiorari should be granted.

Respectfully submitted,

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